

130030

STATE OF MICHIGAN
IN THE SUPREME COURT

CAROL KRUSCHKE,

Plaintiff-Appellee

Supreme Court No. 130030

vs.

Court of Appeals Case No. 259601

JAMES R. LOVELL, M.D., and
JAMES R. LOVEL, M.D., P.C.,

Lower Court No. 03-040879-NH

Defendants-Appellants,

AMICUS CURIAE BRIEF OF
MICHIGAN OSTEOPATHIC ASSOCIATION
IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

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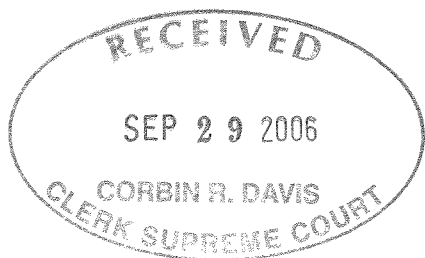


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STATEMENT OF QUESTION PRESENTED

Whether this Court should grant leave to appeal from and reverse a Court of Appeals decision which erroneously concludes that Plaintiff did not “discover” a possible claim within the meaning of MCL 600.5838a until she was advised by a subsequent treating physician that the hysterectomy that she had nearly 4 ½ years earlier was medically unnecessary?

The Trial Court would say “yes.”

The Court of Appeals would say “no.”

Plaintiff-Appellee would say “no.”

Defendant-Appellant would say “yes.”

Amicus Curiae Michigan Osteopathic Association says “yes.”

STATEMENT OF PROCEEDINGS AND INTEREST OF MOA

This *amicus curiae* brief is filed pursuant to the invitation for the participation of the Michigan Osteopathic Association (the “MOA”) set forth in the order granting Defendants’ Application For Leave To Appeal.

The MOA is a Michigan nonprofit corporation formed in 1898 as a divisional society of the American Osteopathic Association. The MOA is one of the largest osteopathic state organizations and represents over 5,000 osteopathic physicians and students in Michigan. The MOA was instrumental in the founding of Michigan State University College of Osteopathic Medicine, the first publicly supported osteopathic institution in the country. Michigan is second only to Pennsylvania in the number of actively practicing osteopathic physicians.

The Legislature has directed that a claim for medical malpractice be brought within two years of the date of the act or omission that is the basis for the claim, or within six months after the plaintiff discovers or should have discovered the existence of the claim. MCL 600.5805(5); MCL 600.5838a(1) and (3). In this case, the two-year limitations period expired before the action was commenced. However, Plaintiff-Appellee Carol Kruschke (“Ms. Kruschke”) asserted that the claim was timely because she commenced the action within six months of being told by another physician that the hysterectomy Defendant-Appellant Dr. James R. Lovell performed nearly 4 ½ years earlier was “medically unnecessary.” The Court of Appeals agreed with Ms. Kruschke and reversed the Circuit Court’s entry of summary disposition for Dr. Lovell.

MOA believes that the Court of Appeals failed to faithfully follow the rule articulated by this Court to determine when a plaintiff should be deemed to have discovered a claim within the meaning of MCL 600.5838a. For reasons more fully explained below, MOA urges this Court to grant the application for leave to appeal and reverse the Court of Appeals’ decision.

This brief is being filed pursuant to the invitation of this Court in its April 14, 2006 Order directing that the case be scheduled for oral argument “on whether to grant the application or take other peremptory action.”

ARGUMENT

MOA agrees with, adopts, and incorporates the argument made by *amicus curiae* Michigan State Medical Society.

Respectfully submitted,

CLARK HILL PLC

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Dated: September 29, 2006

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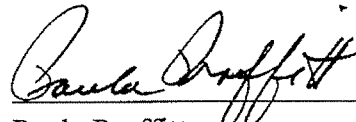
PROOF OF SERVICE

Paula Proffitt of Clark Hill, PLC, being duly sworn, says that on September 29, 2006, she served via U.S. mail a copy of the Amicus Curiae brief of Michigan Osteopathic association in Support of Application for Leave to Appeal and this Proof of Service upon:

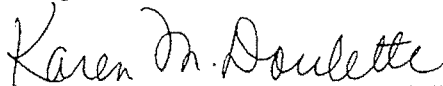
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Paula Proffitt

Subscribed and sworn to before me
on September 29, 2006.



KAREN M. DOULETTE
Notary Public, State of MI
County of Wayne
My Commission Expires 11-02-2011
Acting in the County of *Wayne*